



**Comptroller General
of the United States**

Washington, D.C. 20548

Decision

Matter of: AMDATA, Inc.

File: B-239216

Date: August 13, 1990

John B. Denniston, Esq., Covington & Burling, for the protester.

Joel R. Feidelman, P.C., Esq., Fried, Frank, Harris, Shriver & Jacobson, for Science Applications International Corporation, an interested party.

Jonathan H. Kosarin, Esq., Theodore Hoffman, Esq., and Michael D. Rigg, Esq., Department of the Navy, for the agency.

Linda C. Glass, Esq., and Michael R. Golden, Esq., Office of the General Counsel, GAO, participated in the preparation of the decision.

DIGEST

Proposal was properly found technically unacceptable where proposal did not affirmatively demonstrate that offered ultrasonic inspection system was completely compatible with the Navy's existing equipment as required by the specifications. Blanket statement of compliance does not override offeror's failure to furnish sufficient information in its proposal to enable the agency to determine its technical acceptability.

DECISION

AMDATA, Inc. protests the rejection of its proposal as technically unacceptable under request for proposals (RFP) No. N00189-89-R-0455 issued by the Naval Supply Center, Norfolk, Virginia, for portable ultrasonic inspection systems for inspection of the A-6 aircraft.

The ultrasonic inspection system detects, locates and provides configuration and size imaging of defects in aircraft structures, flight surfaces, and fuselage components. AMDATA claims that the Navy improperly rejected its proposal as technically unacceptable and that the RFP specifications were unduly restrictive.

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We dismiss the protest in part and deny it in part.

The solicitation was issued on September 11, 1989 on an unrestricted basis and contemplated award to the low-priced, technically acceptable offeror. Subsequently, in November, amendment 4 was issued changing the procurement to a sole-source one requiring the ultrasonic imaging equipment currently being used which is manufactured by Science Applications International Corporation (SAIC). This action was taken pursuant to a justification and approval (J&A) which concluded that a sole-source award to SAIC was justified under 10 U.S.C. § 2304(c)(1) (1988), which authorizes use of other than competitive procedures when the items needed are available from only one responsible source or a limited number of such sources and no other type of product will satisfy the agency's needs. According to the J&A, the SAIC system was mandatory because the new inspection systems must be compatible with the existing systems to permit comparison of the reinspection data with the prior inspection data already generated and stored by the Navy. Without full compatibility, an accurate comparison of the reinspection data with the prior data could not be performed and consequently defects in the aircraft might not be accurately identified. The J&A states that the value of this prior data is inestimable, and the loss of the ability to compare periodic inspection data with the earlier data would compromise flight safety and mission capability of the A-6 aircraft.

On November 20, AMDATA protested to the agency the change of the RFP to one for a sole-source acquisition and the alleged restrictiveness of the specifications. In response, AMDATA was told by the Navy that it would be allowed to submit a proposal. The Navy also issued amendment 7 which contained changes in the specifications in response to AMDATA's concerns and set the closing date for receipt of proposals for January 23, 1990. Amendment 7 further emphasized the Navy's requirement for complete compatibility with the existing SAIC ultrasonic equipment.

The RFP specifically required that the system, which included 15 components, attachments and accessories, including software, be capable of collecting and storing data in a method compatible with SAIC's Ultra Image III systems and its Ultratec analysis unit currently at the depot level maintenance facilities. The system was to be capable of collecting, storing, and manipulating inspection data to permit direct comparison of that data with data from previous inspections of the same aircraft component. The system was to be capable of using any inspection data disk to set up the original inspection parameters, then perform a

new inspection using these parameters and directly compare the results between the two inspections on any other inspection system or analysis unit. Offerors were required to demonstrate in their technical proposals that they could meet RFP requirements. In response to a request by AMDATA, the Navy provided an inspection data disk to aid AMDATA in satisfying compatibility requirements.

AMDATA and SAIC submitted timely proposals. In its initial proposal, AMDATA stated that acquired data transferred from its portable imaging equipment via floppy diskette would be fully compatible for analysis by other systems. The technical evaluators found that AMDATA's offer was unacceptable because while the offer dealt with diskette format compatibility, it did not deal with the ability to compare data. The technical report advised that the evaluators were not aware of any company that had demonstrated the capability to permit ultrasonic data exchange between the different manufacturers' equipment. The evaluators concluded that significant modification to AMDATA's system would be required. AMDATA was notified of its technical deficiencies^{1/} by letter dated February 15, 1990.

In response, AMDATA submitted a revised proposal for evaluation. In its revised offer, it stated that its software is fully compatible with existing data files and stated that compatibility flowed both ways, that is, between its units and the existing units. It also stated that "2 percent of [its] software [require] minimal modifications to address the specific needs of the subject solicitation."

The technical evaluators found that this response did not satisfy the compatibility requirements. First, the agency found that AMDATA failed to explain how it intended to ensure system compatibility. Specifically, the proposal did not address compatibility beyond an exchange of data files on the diskette. For example, there was no

^{1/} AMDATA's proposal was found technically deficient with respect to nine specific areas, including the failure to meet the compatibility requirement. The Navy reports that 100 percent compatibility is a critical requirement and that no risk of equipment incompatibility can be tolerated. Thus, the record shows that an offeror's failure to meet the compatibility requirement would alone have resulted in the rejection of its proposal. We therefore limit our discussion here to the requirement for complete compatibility with the existing SAIC system.

explanation of how the exchange would permit comparison of the data from the other manufacturer's equipment or AMDATA's data by the other manufacturer's equipment. Finally, the evaluators believed the representation that only a 2 percent modification of the software was necessary was insufficient to make the proposal acceptable because even a 2 percent modification could involve a significant effort that might or might not result in the required compatibility. The Navy rejected AMDATA's offer as unacceptable. A best and final offer was requested from SAIC, as the firm with the only technically acceptable offer. Award was made to SAIC on March 30.

In its protest letter of April 6, the protester essentially challenges the solicitation's requirements as unduly restrictive. AMDATA contends that the Navy, instead of issuing specifications as functional requirements, described in detail the SAIC system. The Navy asserts that this protest issue is untimely. We agree.

Under our Bid Protest Regulations, 4 C.F.R. § 21.2(a)(1) (1990), a protest based on alleged improprieties in a solicitation, such as unduly restrictive specifications which are apparent prior to the date for receipt of proposals, must be filed before that date. Alleged improprieties which do not exist in the initial solicitation, but which are subsequently incorporated into the solicitation, must be protested no later than the next closing date for receipt of proposals following the incorporation. AMDATA filed an agency-level objection to the restrictive provisions in the RFP prior to the closing date, asserting that the specifications were written too narrowly. In response, the Navy issued amendment 7 which did clarify certain RFP provisions. AMDATA admits that it thought the amended specifications remained excessively restrictive. AMDATA chose to submit a proposal instead of protesting. If the amended specifications were also unduly restrictive as AMDATA now asserts, AMDATA had, at the latest, until the next closing date to protest. It did not do so. Thus, AMDATA's argument that the agency's specifications were unduly restrictive of competition, filed after award, is untimely and will not be considered on the merits.

Further, we will not consider this protest basis under the significant issue exception to our timeliness requirements. AMDATA's protest concerns restrictive specifications. This general issue is one we have repeatedly addressed. Further, the specific nature of the alleged restrictiveness here is not of widespread interest to the procurement community, but, rather, concerns the specifications on this particular

procurement. Custom Programmers, Inc., B-235716, Sept. 19, 1989, 89-2 CPD ¶ 245.

AMDATA also challenges as erroneous the agency's determination that its proposed equipment was unacceptable because it was not compatible with the SAIC equipment. We disagree. In a negotiated procurement, a proposal that fails to conform to the material terms and conditions of the solicitation is unacceptable and therefore may not form the basis for award. Picker Int'l Inc., 68 Comp. Gen. 265 (1989), 89-1 CPD ¶ 188.


The record is clear that the need for 100 percent compatibility was a critical requirement. The need for complete compatibility was stated in the original RFP and was confirmed in amendment 7, and AMDATA in its protest does not dispute its importance. In our view, AMDATA failed to demonstrate in its initial or revised proposal that its system met the RFP's mandatory requirement for compatibility.

In its revised proposal, AMDATA admits that its system is not completely compatible with the SAIC system. We think the agency could conclude that the 2 percent software modification required to make AMDATA's product compatible could represent a significant effort in light of the variables that can be affected by any one software change. In other words, we think the agency reasonably could not be certain as to the extent of the necessary modifications and whether the software would perform properly.

Although AMDATA identifies for the first time in its protest some of the software changes and argues that the modifications are straightforward and can be accomplished in a short period of time, this information was not in its offer. Based on AMDATA's conclusory statements promising compatibility in its proposal, the agency could not reasonably determine whether AMDATA's equipment would offer the data exchange capability required. It is fundamental that an offeror has an obligation to submit a proposal which fully complies with the terms and conditions of the solicitation and runs the risk of having its proposal rejected if it fails to do so. See Addsco Indus., Inc., B-233693, Mar. 28, 1989, 89-1 CPD ¶ 317. The offeror must demonstrate the technical sufficiency of its proposal, and a blanket offer of compliance with solicitation requirements is not sufficient to meet a solicitation requirement for specific information which an agency deems necessary for evaluating the technical acceptability of proposals. Data Controls/North Inc., B-233628.4, Apr. 5, 1989, 89-1 CPD ¶ 354.

Here, the record clearly shows that AMDATA did not provide the Navy with the necessary details to demonstrate that it could modify its software to meet the compatibility requirement and, in fact, AMDATA's submission showed that in actuality it had not achieved compatibility. Thus, in our view, its proposal was reasonably found to be technically unacceptable.

The protest is dismissed in part and denied in part.



James F. Hinchman
General Counsel